so frequently used, to be subrogated to all rights of the principal against any one else to be reimbursed for expenditures arising out of the transaction. *Bushong* v. *Taylor*, 82 Mo. 660; *Heart* v. *Bryan*, 2 Dev. Eq. (N. C.) 147. In the present case the situation is somewhat unusual in that one bond creates two entirely distinct suretyships. The surety is bound to the government for the completion of the work by the contractor and is bound to the laborers and materialmen for the payment of their claims by the contractor. *United States* v. *National Security Co.*, 92 Fed 549. Consequently the surety, when it discharges the claim of the laborers, is entitled to be subrogated to the fund retained by the government, since, up to the amount of that fund, the burden should ultimately be borne by the government and not by the contractor. The surety is also entitled to exoneration from that fund. *Richards Brick Co.* v. *Rothwell*, 18 D. C. App. 516.

TAXATION — PARTICULAR FORMS OF TAXATION — SPECIAL ASSESSMENTS FOR SPRINKLING STREETS. — Under a statute authorizing cities to provide by ordinance for the sprinkling of streets and to levy and collect special assessments therefor, the defendant city ordered an assessment for such a purpose. The abutting owners brought a bill in equity to have the assessment set aside. *Held*, that the statute authorizing the assessment is invalid. *Stephens* v. *City of Port Huron*, 113 N. W. 291 (Mich.). See NOTES, p. 533.

TRUSTS — CESTUI'S INTEREST IN RES — RIGHT TO EXCESS OF INTEREST OBTAINED BY BREACH OF TRUST AS BETWEEN TENANT FOR LIFE AND REMAINDERMAN. — The trustee of a settlement, invested in three per cent consols, sold the consols and used the proceeds in an unauthorized investment which yielded five per cent interest. After a number of years the trustee replaced in consols the amount he had withdrawn. The plaintiff, the remainderman under the settlement, claimed that the excess of interest obtained by the breach of trust should be added to the capital. *Held*, that the plaintiff is not entitled to the excess of interest. *Slade* v. *Chaine*, [1908] 1 Ch. 522.

The case follows two English cases, apparently the only decisions on the point. *Stroud* v. *Gwyer*, 28 Beav. 130; see *In re Appleby*, [1903] 1 Ch. 565. An early English case, however, seems irreconcilable in principle, in holding that when a trustee, in breach of his duty, failed to convert funds into authorized securities, but left them in a loan bearing ten per cent interest, the life beneficiary was not entitled to the actual interest that the money yielded. *Dimes* v. *Scott*, 4 Russ. 195; see also *Hill* v. *Hill*, 45 L. T. Rep. 126. Aside from an approval of this latter decision, the precise point does not seem to have arisen in this country. See *In re Lasak's Estate*, 20 N. Y. Supp. 74. It seems settled that when trust funds are invested in bonds which depreciate in value, such deductions should be made from the income of the life beneficiary as will make the capital of the trust fund whole when the bonds mature. *New York, etc., Co.* v. *Baker*, 165 N. Y. 484 If, to keep the *corpus* undiminished, the life beneficiary is to suffer, it would seem fair that he should receive such windfalls as may arise from excess in interest so long, at least, as the remainderman is uninjured.

UNFAIR COMPETITION — CONSPIRACY — NECESSITY OF INTENT TO INJURE PLAINTIFF. — Certain elevator owners, under an agreement to regulate competition in the grain business, combined with certain railroads to discriminate against non-members of the combination. The plaintiff sued for damages from resulting discrimination. *Held*, that the parties to the combination may avoid liability for conspiracy by proving that they entered the agreement in the belief that the plaintiff would become a member. *Kellogg* v. *Sowerby*, 190 N. Y. 370.

The intent is a vital element in a conspiracy. EDDY, COMBINATIONS, § 369. But this simply means that a combination is not illegal unless its object or the intended means of attaining it are improper. *Cf. O'Callaghan* v. *Cronan*, 121 Mass. 114; *Talbot* v. *Cains*, 5 Met. (Mass.) 520. The present case, however, before imposing civil liability, requires proof that the confederacy was, from its

inception, intended to attack the specific party suing. The gist of civil recovery is damage, the conspiracy usually being important only to give additional rights against persons who, though inactive, nevertheless participated in the common design. *Hutchins* v. *Hutchins*, 7 Hill (N. Y.) 104; *Robertson* v. *Parks*, 76 Md. 118. So the plaintiff may fail to prove the conspiracy, yet recover against any defendants who actually caused the injury. *Doremus* v. *Hennessy*, 62 Ill. App. 391. On this principle the present plaintiff should have recovered at least from those who discriminated. But under the New York statute, this combination is a criminal conspiracy. N. Y. PENAL CODE, § 168, subd. 6; *People* v. *Sheldon*, 139 N. Y. 251. When an injury has been caused by the carrying out of criminal designs, it should be no excuse that the acts originated from another purpose. The principal case, therefore, seems wrong in giving heed to the specific intent where an illegal combination was the proximate cause of the injury.

WITNESSES — COMPETENCY — COMPETENCY OF WITNESS CONVICTED IN ANOTHER STATE TO TESTIFY. — A Missouri statute declared that persons convicted of certain specified crimes should be incompetent to be sworn as witnesses. In a criminal suit a witness convicted of such a crime in Indiana testified under objection. *Held*, that his testimony was properly admitted in Missouri. *State* v. *Landrum*, 106 S. W. 1111 (Mo., K. C. Ct. App.).

The civil law regarded infamy as a status governed by the law of the convict's domicile. 2 BOULLENOIS, obs. 32. This view, with its incident of incapacity to testify elsewhere, was not adopted by the common law. STORY, CONF. OF L., 8 ed., §§ 91, 92. Nor does the constitutional requirement that judgments of the several states be given full faith and credit give rise to an extraterritorial incapacity; it refers only to the conclusiveness of the fact for which a judgment stands. *Com.* v. *Green*, 17 Mass. 515. The question then is, does the local law of a state render one convicted in another state incompetent to testify? It has been held that it does, provided the other state's law corresponds with that of the former. *Chase* v. *Blodgett*, 10 N. H. 22. But the better of the scanty authority, either at common law or under statutes substantially declaratory, gives no effect at home to foreign convictions, whatever their effect there. *Sims* v. *Sims*, 75 N. Y. 466; *contra*, *State* v. *Candler*, 3 Hawks (N. C.) 393. This result is justified in view of the varying attitudes of different states toward the same crimes, and the possible untrustworthiness of one convicted of crime abroad is sufficiently guarded against by admitting the fact of conviction on the question of his credibility.

BOOKS AND PERIODICALS.

I. LEADING LEGAL ARTICLES.

GOVERNMENTAL POWERS OF THE PRESIDENT OVER NEWLY ACQUIRED TERRITORY. — By the treaty of Feb. 26, 1904, with the Republic of Panama the United States acquired in perpetuity the use of a strip of land ten miles wide, running across the isthmus, which is commonly known as the Canal Zone. The Fifty-eighth Congress, then in session, voted by a resolution of April 28, 1904, that until the expiration of that session, or unless provision for a temporary government should be sooner made, all powers of government should be vested in the President, or in such persons as he should appoint. The Sixtieth Congress is now in session. On March 19th Representative Harrison of New York said that since the expiration of the Fifty-eighth Congress no further provision had been made for the government of the Canal Zone; that since that time the President had had authority to act only as the executive of a *de facto* govern-